

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 APR 20 A 11: 19

In the Matter of)	
)	
Request for Review)	
of the Decision of)	
the Universal Service Administrator by)	
)	
Hamilton County School Board)	File No. SLD-173624
Jasper, Florida)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Changes to the Board of Directors)	CC Docket No. 97-21 ✓
of the National Exchange Carrier)	
Association, Inc.)	

ORDER

Adopted: April 16, 2001

Released: April 17, 2001

By the Common Carrier Bureau:

1. The Common Carrier Bureau has under consideration a Request for Review filed by the Hamilton County School Board (Hamilton), Jasper, Florida, on May 9, 2000, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator).¹ Hamilton seeks review of the SLD's denial of its application for discounts for internal connections under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review. To the extent that Hamilton also may be requesting a waiver of the Commission's rules, we deny that request as well.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In the *Fifth Reconsideration Order*, the Commission established rules to govern how discounts would be allocated when total demand exceeds the amount of funds available and a filing

¹ Letter from Patricia Parks, Hamilton County School Board, filed May 9, 2000 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

window is in effect.⁴ These rules provide that requests for telecommunications and Internet access service for all discount categories shall receive first priority for available funds (Priority One services), and requests for internal connections shall receive second priority (Priority Two services).⁵ Thus, when total demand exceeds the total support available, SLD is directed to give first priority for available funding to telecommunications service and Internet access.⁶ Any funding remaining is allocated to requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix.⁷ Schools and libraries eligible for a 90 percent discount would receive first priority for the remaining funds, which would be applied to their request for internal connections. To the extent that funds remain, the Administrator would continue to allocate funds for discounts to eligible applicants at each descending single discount percentage, e.g., eighty-nine percent, eighty-eight percent, and so on until there are no funds remaining.⁸

3. Hamilton applied for funding for internal connections on behalf of an individual school within the school district.⁹ As indicated on its FCC Form 471, this school qualified for an 80 percent discount rate in Funding Year 3. By letter dated April 14, 2000, SLD denied Hamilton's application for discounts on internal connections.¹⁰ In so doing, SLD stated that the "[f]unding cap [in year three] will not provide for Internal Connections less than 81% discount to

⁴ See *Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, 13 FCC Rcd 14915, 14934 at para. 31 (1998) (*Fifth Reconsideration Order*).

⁵ See 47 C.F.R. § 54.507(g)(1)(i).

⁶ The annual cap on federal universal service support for schools and libraries is \$2.25 billion per funding year. See 47 C.F.R. § 54.507(a).

⁷ *Fifth Reconsideration Order*, 13 FCC Rcd at 14938, para. 36. The schools and libraries discount matrix reflects both an applicant's urban or rural status and the percentage of its students eligible for the national school lunch program. 47 C.F.R. § 54.505.

⁸ 47 C.F.R. § 54.507(g)(1)(iii). In the *Eleventh Order on Reconsideration*, the Commission clarified that to the extent that there are single discount percentage levels associated with "shared services," the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for eighty-nine percent, eighty-eight percent and so on. *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Fifth Order on Reconsideration in CC Docket No. 97-21, Eleventh Order on Reconsideration in CC Docket No. 96-45, and Further Notice of Proposed Rulemaking, 14 FCC Rcd 6033, 6035, para. 6 (1999) (*Eleventh Order on Reconsideration*).

⁹ The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review. After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services and submitting a FCC Form 471, which requests support for eligible services. SLD reviews the FCC Form 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

¹⁰ Letter from Schools and Libraries Division, Universal Service Administrative Company to Hamilton County School District, dated April 14, 2000 (Funding Commitment Decision Letter).

be funded.”¹¹

4. On May 9, 2000, Hamilton filed the instant Request for Review of SLD’s decision.¹² Specifically, Hamilton contends that this funding determination is in error because individual schools are evaluated for discount percentages differently than school districts or consortia. Hamilton states that school districts that apply for internal connections on a district-wide basis may “leverage” a school qualifying for a 70 percent discount rate with a school qualifying for 90 percent discount rate using a weighted average and thereby qualify for funding for internal connections for both schools.¹³ Hamilton argues that, in order to treat individual schools more equitably, the Commission should revise its discount matrix. Hamilton proposes that schools applying for discounts on an individual school basis should therefore be allowed to receive a prorated discount percentage within the “80% band” of the matrix (i.e. those schools having between 50 percent to 74 percent of students eligible for the national school lunch program).¹⁴ As a result, those schools having the highest percentage of students eligible for the national school lunch program within the discount band would qualify for higher discount percentages, and thus might qualify for support for internal connections. For example, Hamilton suggests that schools with 74 percent of students eligible for the national school lunch program receive a discount rate of 89 percent, those with 73-71 percent receive a discount of 88 percent and so on.

¹¹ Funding Commitment Decision Letter. To qualify for a discount greater than 80 percent, the percentage of students eligible for the national school lunch program must be 75 percent or above. See 47 C.F.R. § 54.505(c).

¹² Request for Review.

¹³ A school district may divide the total number of students in the district eligible for the national school lunch program by the total number of students in the district to compute the district-wide percentage of eligible students. 47 C.F.R. § 54.505(b)(1).

¹⁴ For the purposes of administering the school lunch program, the Department of Education places schools in five categories, based on the percentage of students eligible for free or reduced-price lunches: 1-19 percent; 20-34 percent; 35-49 percent; 50-74 percent; and 75-100 percent. The Commission adopted these five categories in its schools and libraries discount matrix. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9049, para. 520 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part*, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied*, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied*, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S.Ct. 423 (Nov. 2, 2000).

5. The Commission may waive any provision of its rules for good cause shown.¹⁵ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid, and “an applicant for waiver faces a high hurdle even at the starting gate.”¹⁶ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.¹⁷ In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁸ Waiver is, therefore, appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.¹⁹

6. We have reviewed Hamilton’s Request for Review. Hamilton does not argue that SLD applied the Commission’s rules or SLD’s implementing procedures incorrectly with respect to Hamilton’s application, and we conclude that SLD properly denied funding under those rules and procedures. To the extent that it is requesting a waiver, Hamilton does not indicate that special circumstances exist warranting a deviation from the general rule. Rather, Hamilton argues that the general rule treats individual schools unfairly as compared to school districts. This is not a special circumstance justifying a waiver, but an argument in support for a rulemaking to change the Commission’s rules. A Request for Review or a Request for Waiver is not the appropriate means for requesting such consideration. Instead, Hamilton should properly file a Petition for Rulemaking. Accordingly, we deny Hamilton’s request.

7. Without commenting on the overall merits of Hamilton’s arguments for reconsideration of the Commission’s rules, we will note one factual error underlying a portion of Hamilton’s arguments. School districts that apply for site-specific discounts cannot use the weighted average discount method described in Hamilton’s Request for Review for those discounts.²⁰ The method described in Hamilton’s Request for Review applies only for services shared by multiple schools and only those schools sharing the services—as opposed to all schools in the school district—are included in that calculation.²¹

¹⁵ 47 C.F.R. §1.3.

¹⁶ *WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*).

¹⁷ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁸ *WAIT Radio*, 897 F.2d at 1157.

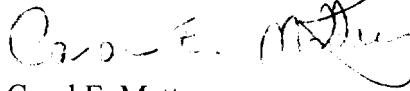
¹⁹ *Northeast Cellular*, 897 F.2d at 1166.

²⁰ See 47 C.F.R. § 54.505(b)(1); Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) (Form 471 Instructions) at 12-14.

²¹ Form 471 Instructions at 12-14.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by the Hamilton County School Board, Jasper, Florida, on May 9, 2000 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau